portion extending slightly beyond the outer sole, an anchor portion at the more resilient, inner sole, and a shaft joining the tip and the anchor. So, when the footwear is worn as on a hard surface, "...said tip portion is caused to retract within said sole by force directed by said stud anchor against said more resilient interior portion....." [claim 1] It is the stud that is caused to move in and out of the sole according to the hardness of the surface on which the shoe is worn.

Claims 1, 8 to 10 and 12 have been rejected as anticipated by Nikura (6029377). Yet, it is respectfully submitted that Nikura, for all its embodiments, does not disclose this claimed feature. Nikura is a typical Japanese, art-blocking patent. Its object seems not to be the obtain claim coverage, but to disclose everything the inventor can contemplate in an effort to block the art. The Examiner directs attention to FIG. 12 as anticipatory. That Figure is described by the patentees as being the sixth embodiment of the second aspect of the invention, and is barely referenced in column 9 of the patent, the reader being advised to go to FIGS. 8 and 11, which themselves refer to former Figures. It does appear that the sole of FIG. 12 has a softer inner layer 4 than the outer layer 6. That, however, is where any resemblance between the function of Nikura and the presently claimed invention ceases.

The Examiner finds that what are called studs 10 of FIG. 12 have tips (unnumbered) and recesses 12. However one might try to analogize the various pieces of Nikura's FIG. 12, there is no way that a tip portion of a stud can be withdrawn within the sole 6. If the piece 10 in FIG. 12 is called a stud, it is most certainly not retractable within the sole outer layer 6, because it overlies and is joined to the sole.

The same is true for the embodiment shown in FIG. 10 of Nikura, where the

stud 10 looks more like a stud. In the written description of FIG. 10, one is referred to that of FIG. 9 , where it is stated that a cap portion 20 overlies the outer surface of the sole 6. Once again, there is no way that the spike 10 of FIG. 10 can move within the sole 6, no matter how many layers form the sole of the shoe of Nikura.

Whatever Nikura had in mind about the functioning of his shoe sole, it is markedly different from that claim by applicant in claim 1 of the present application, where it is specifically claimed that the tip portion is caused to retract within the sole by compressive deformation applied to the bottom surface of the sole.

Claim 8 under examination here is also written in independent form, and claims 9, 10 and 11 all depend from claim 8. Claim 8 also contains the limitation that "the tip portions are caused to retract within the sole by force directed by said stud anchors against a resilient interior portion of said sole ...." Thus, as Nikura does not disclose, and by its structure cannot disclose, a stud having a tip portion that retracts within the sole, claims 8 to 11, as well as claim 1, cannot be anticipated or rendered obvious by Nikura.

Claims 8 to 11 (but not claim 12) have been rejected under Section 103 as obvious over either Dufour or Jankauskas in view of Kastner, the latter being cited to show the tip portion of a stud extending slightly beyond the bottom surface of a sole, which is readily admitted. Nonetheless, neither of the primary references, Dufour or Jankauskas, discloses the remaining portions of claim 8 or the recitations of the claims that are written in dependent form based on claim 8.

Claim 8 adds to the recitations of claim 1 the statement that the tip portion of a stud is formed from metal and has an ability to flex, and that the outer sole of the shoe is formed with recesses at locations where the tip portions extend beyond the outer sole. As

it is phrased in claim 8:

> :...so that when said footwear is worn and compressive deformation is applied to said bottom surface of said sole, said tip portions are caused to retract within said sole by force directed by said stud anchors against a resilient inner portion of said sole and said tip portions flex in said recesses formed at said locations where said tip portions extend beyond said sole surface."

The two primary references do not disclose the more resilient inner layer, nor do they disclose retraction of a tip portion within the outer sole nor tip portions flexing in recesses. Thus, Jankauskas discloses a plurality of rigid studs 20 fixed to a collar 26. The rigidity of the studs is emphasized at col. 3, l. 19 and col. 4, l. 45. Further, it is clear that the studs do not retract within the sole. As stated at col. 4, ll. 42-45: "The applied load causes the elastic material (of the sole) to compress and retract from around the studs 20 , which thereby results in concentrating the applied load on the rigid studs 20." So, Jankauskas works in a completely different manner than the claimed invention: the rubber around the studs retracts, rather than the studs, and the studs, rather than being capable of flexing, are utterly rigid. It is completely inapposite.

The other primary reference, Dufour, is closely related in its disclosure to that of Jankauskas. Rather than a collar, Dufour employs what he calls a metal plate 32 that has teeth 34 formed in it and are in the form of what he calls "frameworks" 30 and 31. The teeth of the metal plates penetrate the surface on which the wearer walks. Of course, as the teeth are rigidly mounted on these so-called frameworks, they cannot retract within the sole. Instead it is the rubber cleats 29 that are compressed or pushed aside, and in that

respect Dufour functions in the same manner as the Jankauskas patent disclosure. Of course, neither of the two primary references, nor the secondary reference, discloses the two sole layers, the inner layer of which is more resilient, and a stud or spike anchored in the more resilient layer for retraction within the sole.

In summary, it is respectfully submitted that none of the references cited discloses the broad concept of the present invention: an outer and an inner sole, the inner being more resilient than the outer, and a stud having a tip portion that extends beyond the outer sole layer until compressive force is applied to the tip portion, forcing it within the sole because it is anchored in the more resilient inner sole layer. Further, none of the references discloses a tip portion that is flexible and surrounded by a recess in the sole, so that the flexibility adds a further dimension to the stud as it is withdrawn within the sole. This is probably because, when the stud is not withdrawn within the sole but exposed, such flexibility would be a detriment and might well cause the stud to snap off under the application of pressure.

Claims 2 to 7 were not examined as they are drawn to non-elected species. Those claims all depend, either directly or indirectly, from claim 1. So, if claim 1 is patentable, it is respectfully asserted that claims 2 to 7 are patentable *a fortiori*. As claim 1 appears to be neither anticipated nor rendered obvious by the prior art cited, it is respectfully suggested that the entirety of the claims of the present application are now patentable, and an indication of allowability of claims 1 to 12 is respectfully solicited.

Respectfully submitted,

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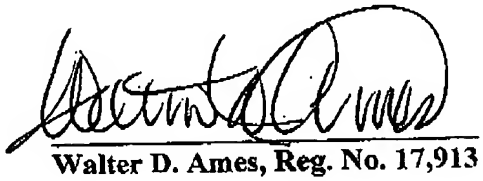
CERTIFICATE OF MAILING

It is hereby certified that on the 13th day of January, 2005 the foregoing Request for Reconsideration was faxed to Technology Center 3700 by sending the Request to fax number (703) 872-9306 at the U.S. Patent and Trademark Office.



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